

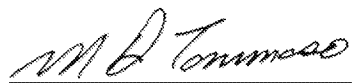
Ministry of the Solicitor General

*Emergency Order(s) pursuant to the
Emergency Management and Civil Protection Act*

Proposed Items for Review

	Order Number(s) and Title(s)	Amendment	Revocation
1.	O. Reg. 71/22 Critical Infrastructure and Highways	X	☐
2.		☐	☐
3.		☐	☐

- ☐ The Ministry acknowledges that a communications snapshot must be filed to complete this submission.


Deputy Minister

February 14, 2022
Date


Minister

February 14, 2022
Date

s 1. Proposal Context

On February 11, 2022, the Premier declared a province-wide emergency pursuant to section 7.0.1 of the *Emergency Management and Civil Protection Act* (EMCPA). The emergency was declared as a result of interference with transportation infrastructure and other critical infrastructure that is occurring across the province, which is preventing the movement of people and the delivery of essential goods and services. The Premier's declaration of was confirmed by Cabinet on February 12, 2022 and through an Order in Council – O. Reg. 70/22

In addition, emergency order (O. Reg. 71/22) was filed on February 12 in connection with the emergency. The emergency order:

- Prohibits persons from blocking critical infrastructure.
- Prohibits persons from preventing the ordinary use of, and preventing travel to or from, highways, walkways and bridges where this would disrupt the delivery of goods and services, disrupt economic activities or interfere with the health and safety of the public.
- Gives provincial offences officers, including police officers the power to take enforcement actions when they have reasonable grounds to believe an individual is not complying with the requirements in the Order. This includes removing an object (e.g. a vehicle) where an individual who is required to do so, does not do so.
- Requires individuals to comply with the orders of provincial offences officers.
- Gives both the Registrar of Motor Vehicles and provincial offences officers the power to order owners or operators of vehicles that are contravening the order, to remove their vehicles, requires them to comply and permits the removal of the vehicles if they don't comply.
- Sets out powers relating to the suspension and cancelation of driver's licences, licence plate permits and Commercial Vehicle Operator's Registration Certificates.

Building on the approach in the emergency order, the Ministry of the Solicitor General is proposing the following amendments:

The proposed amendments would modify O. Reg 71/22 to do the following:

- Confirm that provincial offences officers can remove objects (including vehicles) themselves, as well as cause someone else to remove them, when the object is not removed in accordance with the officers' orders under the emergency order.
- Expressly give provincial offences officers who remove objects, or cause them to be removed, the power to detain and store those objects or have someone else detain and store them, for as long as the emergency order is in effect.
 - o This provision is similar to but broader than s. 134.1 of the *Highway Traffic Act* because it applies to all provincial offences officers in relation to all kinds of objects.
 - o The effect of this change is that provincial offences officers will clearly have "possession" of removed objects, and section 18.2 of the *Civil Remedies Act*,

2001 will apply, allowing for public bodies (as defined in that section) to keep the object while the Attorney General decides whether to start a legal proceeding for forfeiture. The object can be kept for up to 75 days once the object is requested or demanded to be returned, or once the public body starts or receives notice of a legal proceeding seeking the return of the object, whichever is earlier.

- Requires provincial offences officers to make reasonable efforts to notify the object's owner of where it is being detained and stored.
- Makes the owners, operators and most recent drivers of vehicles responsible for the costs and charges for removal, detention and storage, as well as make the owners of other objects [or person who used the object in a contravention] responsible for such costs and charges.
 - o Specifically, the costs and charges are both a debt that can be recovered in court and a lien on the object that can be enforced under the *Repair and Storage Liens Act*.
- Allow any person (can be an individual or a corporation) who is reasonably qualified to assist with removal, detention or storage to perform these activities at the request of a provincial offences officer.
 - o The effect of this change is that when a person provides assistance in good faith in these circumstances, the protections from liability in the EMCPA will apply to them (i.e., they will be "individuals acting pursuant to an order made under this Act" for the purpose of s. 11 (1)).

If approved, the order will come into effect upon being made and will be filed immediately.

s. 2 **Direction, Urgency and Emergency Order Rationale**

Following the declaration of emergency on February 11, 2022, there continues to be a threat of impeded access to or egress from, or ordinary use of, critical infrastructure, including essential trade corridors across the province.

Critically, the health and safety of the people of Ottawa is still compromised given the presence of the "Freedom Convoy" and other protesters over the past few weeks. In order to address the situation in Ottawa and be able to respond to other urgent situations associated with this emergency, it is critical to ensure that measures are in place to assist and support law enforcement personnel on the ground to be able to take swift and appropriate action to bring the situation to an end.

The proposed amendments are essential and necessary to provide additional tools to respond to the ongoing situation.

s. 3 Type and Criteria for Emergency Order (s. 7.0.2 of EMCPA)

This order is made pursuant to s. 7.0.2. To add the proposed provisions to this order, the LGIC must believe the additions are necessary and essential in the circumstances to prevent, reduce or mitigate serious harm to persons or substantial damage to property.

It can be argued that it is necessary and essential to add the new powers because without these powers police and other provincial offences officers will not have the authority to retain vehicles or other objects for as long as may be necessary to prevent those objects from being used again to create another impediment to accessing critical infrastructure or highways. The determination that some individuals have shown to continue to impede use of critical infrastructure despite the existence of the emergency order and other legal obligations makes it reasonable to be concerned that some of these individuals might create an impediment again if they have the opportunity. The LGIC can reasonably believe that without these new powers the emergency order will be less effective than needed in achieving its objective.

Additionally, there is no express mechanism for recovering costs associated with potentially costly retentions of objectives, such as storing trucks, which undermines the practical viability of the enforcement tools involving the removal of such objects.

Further, it can be argued that it is necessary and essential to add a provision enabling qualified persons to assist police or other provincial offences officers. Such a provision allows those assisting the officers to benefit from the statutory immunity provision in s. 11 (1) of the Act. Such protection is essential and necessary as persons who could render assistance have expressed reluctance to do so as a result of potential liability.

In the LGIC's opinion, it must also be reasonable to believe that,

- (a) the harm or damage will be alleviated by the order [in this case, the amendments]; and
- (b) making the order [amendments] is a reasonable alternative to other measures that might be taken to address the emergency. (s. 7.0.2 (2))

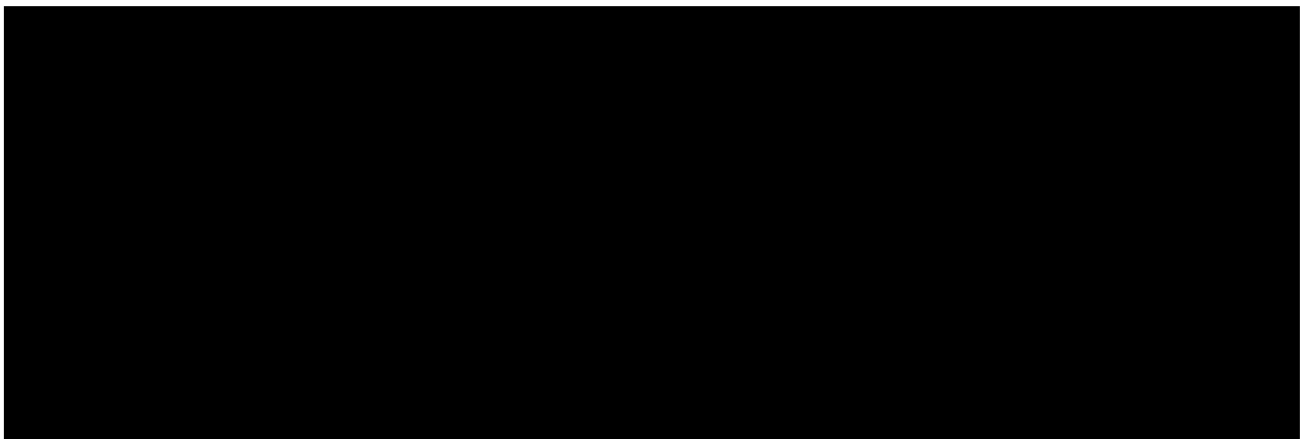
It is reasonable to believe the harm or damage will be alleviated by the amendments because the amendments provide various measures to make the existing order more effective in bringing about the removal of the impediments that are causing the harm and damage. The amendments expressly provide authority for retaining possession of property, which will prevent objects such as trucks from being promptly re-used to commit similar offences. Additionally, the new provisions set out a clear mechanism for recovering costs associated with retaining possession, which will ensure that costly retentions, such as storing trucks, are financially viable and enforcement of the order continues to be possible. Similarly, the new provisions make rendering assistance more financially viable to those whose assistance may be needed by enforcement personnel.

Making the order is a reasonable alternative to relying on existing measures. Section 134.1 of the *Highway Traffic Act* provides comparable authority, but only for police officers (not other provincial offences officers) and only in respect of vehicles, cargo and debris (not other objects that may be impeding critical infrastructure). Section 18.2 of the *Civil Remedies Act, 2001* also provides authority to retain possession of certain property but only if the property is already in the lawful possession of a public body (such as a police service), and the order does not currently grant a clear authority for possession in the first place. The only equally satisfactory alternatives to address the issues would be statutory amendments, which cannot be done immediately. Similarly, statutory amendments would be the only means to provide an indemnity to persons who provide assistance to enforcement officials. While providing for indemnities in contracts with the service providers may be a suitable alternative approach in some circumstances, it is not clear that all enforcement personnel and all service providers could enter such contracts in a timely fashion.

An emergency order can only apply where it is necessary, for as long as necessary (s. 7.0.2 (3)). It has been determined that the order must apply throughout the province to prevent the expected recurrence of obstructive activities in new locations once they are shut down at the current locations. The amendments supplement the existing order and must be in effect for the same duration, which is a maximum of 14 days from the date the original order was made, unless renewed. Any shorter period is expected to be insufficient time for further steps under the *Civil Remedies Act, 2001* to be taken, as the nature of the emergency is that there is an ongoing concern about vehicles and other objects continuing to be used to impede critical infrastructure.

The amendments to this order would specifically be made under the following paragraphs of s. 7.0.2 (4):

- 6. To prevent, respond to or alleviate the effects of the emergency, constructing works, restoring necessary facilities and appropriating, using, destroying, removing or disposing of property (specifically, removing property)
- 12. Authorizing, but not requiring, any person, or any person of a class of persons, to render services of a type that that person, or a person of that class, is reasonably qualified to provide.
- 14. Consistent with the powers authorized in this subsection, taking such other actions or implementing such other measures as the Lieutenant Governor in Council considers necessary in order to prevent, respond to or alleviate the effects of the emergency.



s. 4 Approach and Intended Outcomes

The emergency order as filed already imposes a duty on individuals and vehicles to stop impeding access to or egress from, and the ordinary use of, critical infrastructure, including through the use of a vehicle to block access. An individual's failure to comply with an order from an enforcement officer under this emergency order will amount to an offence under the EMCPA for breaching this order.

The penalty for breaching an order under the EMCPA if issued a notice of offence (ticketed) under the *Provincial Offences Act* (POA) is \$750. The maximum punishment for breaching an order charged under other mechanisms under the POA is one-year imprisonment and a fine of up to \$100,000 for an individual. Police officers and other provincial offences officers will have the authority to enforce the orders.

In addition, the order as filed provides the Registrar of Motor Vehicles and Deputy Registrar the power to make an order suspending or canceling licence plate permits, driver's licences and Commercial Vehicle Operator's Registration Certificates.

The order already provides a police officer or provincial offences officer the power to remove an object where an individual fails to do so promptly after being ordered to do so. The proposed amendments would make it clear that a police officer or provincial offences officer has the authority to detain an object that has been removed for the duration that the emergency order is in place. The amendment would also make it clear that costs associated with removal and detention of an object would be debts owed by an owner, operator or driver, as applicable. A lien would also be placed on the object if the costs have not been addressed.

The *Civil Remedies Act, 2001* sets out processes for Civil Remedies for Illicit Activities (CRIA). These include processes related to seizure and forfeiture of items where an indictable offence has been committed. In a situation such as the protests in Ottawa, where it may not be possible to immediately bring forward charges (such as mischief), the amendments to the order would enable a provincial offences officer, including a police officer, to detain an object where there has been a breach of the emergency order. There are no provisions within the order relating to forfeiture of an object.

In addition, the amendments will also authorize a person who is reasonably qualified to provide assistance with storage and removal, if requested by a police officer or other provincial offences officer. This would mean that a tow truck driver could be asked to provide assistance to move a truck by police or a provincial offences officer. This provision will cause the protections against liability in the EMCPA to apply to the person providing assistance.

s. 5 Implementation

If approved, the order will come into effect upon being made and will be filed immediately.

Clear communication to law enforcement will be critical. New measures will be communicated to law enforcement personnel through an All Chiefs Memoranda (ACM). While SOLGEN does not direct police service operations or instruct them on the application of police powers, information about emergency measures, and new authorities, as well as associated penalties related to any new orders will be shared with all police services.

Critical information will also be shared with key partner enforcement ministries. The ministry's dedicated Enforcement Support Line and email resource will also make information available to all provincial offences officers, including but not limited to police services.

s. 6 Risks

Civil Liberties Organizations Concerns

There could be a concern that the government is making unnecessary measures given that provisions already exist within the *Civil Remedies Act, 2001* for seizure and forfeiture and the *Highway Traffic Act* for removal and storage of vehicles, cargo and debris. There could also be a concern that the measures create undue hardship.

Trucking Companies

Some trucking companies may not be aware that their trucks are impacted as part of these protests. Detaining trucks could have a negative impact for some businesses by taking trucks off the road for the duration of this order. The owner, operator and driver would then be liable for the costs and charges associated with the removal and detention of a truck.

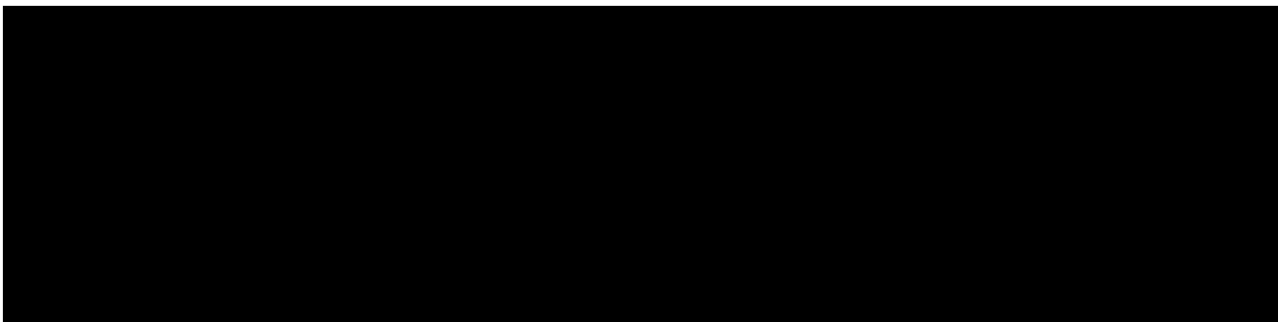
In addition, even though the amendments will cause the protections against liability in the EMCPA to apply to the person providing assistance. It does not compel them to assist law enforcement. The protections would not mitigate concerns by the towing industry around the threats that they may have been receiving.

Public Reaction

There is likely to be a mixed public reaction as some individuals who support the protestors will oppose the detention of objects like trucks and see it as an overreach by the government. However, others will respond positively to the government taking these further actions to end the protests in order to restore order and protect Ontarians.

Operators Whose Vehicles or Other Objects Are Detained

There is a risk that the proposed measures could have a negative impact not only on the vehicle operators but also their families. In some instances, truck operators in Ottawa for example, are reported to be using the truck as a residence for them and their families that are also in situ. It will be important to ensure that supports are in place to ensure the safety and protection of children that might be impacted by the loss of a local residence.

Legal RisksConstitutional RiskConfusion for Law Enforcement Personnel

There is a risk that the changes might create confusion for law enforcement personnel. It will be critical to ensure that the measures are clear, practical and make sense on the ground for law enforcement personnel. Clear communication to local enforcement personnel about these measures will be necessary. Given that the measures build on existing approaches under the *Civil Remedies Act, 2001*, this should make it easier for enforcement personnel to understand and apply.

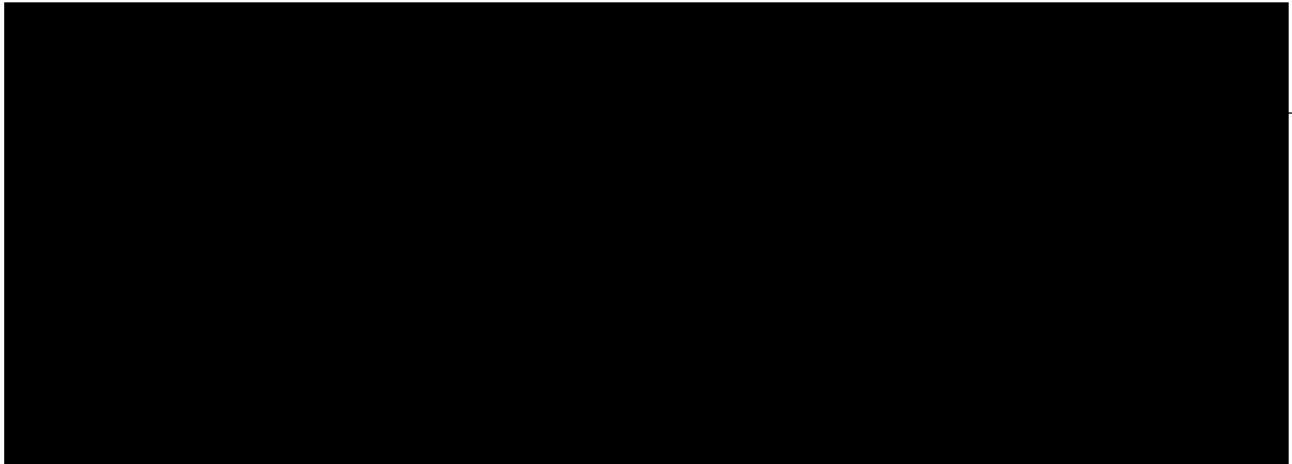
s. 7 Communications

If approved, the amendments to this order would come into effect on filing. This amendment builds on O. Reg. 71/22 which came into effect on February 12.

Proactive targeted communications are recommended in coordination with MTO, MLTSD and MMAH. The new amendments will be communicated to law enforcement personnel through an All Chiefs Memo (ACM) and utilize other ministry channels to connect with additional provincial offences personnel. The order will be communicated directly to media through the Premier's Office and SolGen will also update Ontario.ca/alert accordingly.

Key Message

- Public safety is a top priority of this government. It is critical the government continues to take the steps necessary to protect the economy, critical infrastructure, border crossings, streets and highways from disruption. Measures and restrictions will be enforced, and fines levied.



s. 9 **Contacts and Appendices**

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